
Commerce & Labor Committee

SSB 5850

Brief Description: Clarifying the definition of "sick leave" for family leave.

Sponsors: Senate Committee on Labor, Commerce, Research & Development (originally sponsored by Senators Spanel, Keiser, Kohl-Welles and Shin).

Brief Summary of Substitute Bill

- Provides that an employee may use time allowed under certain disability policies to care for family members who have certain health conditions.

Hearing Date: 3/21/05

Staff: Jill Reinmuth (786-7134).

Background:

The state Family Care Law provides that, if employees are entitled to sick leave or other paid time off, employers must allow employees to use their choice of that leave to care for children with health conditions that require treatment or supervision, or spouses, parents, parents-in-law, or grandparents who have serious health conditions or emergency conditions. "Sick leave or other paid time off" is defined as time allowed under the terms of an appropriate collective bargaining agreement or employer policy, as applicable to an employee for illness, vacation, and personal holiday. The definition of "sick leave or other paid time off" does not explicitly exclude disability leave. However, when the Legislature added this definition to the state Family Care Law in 2002, colloquies on the floors of the House of Representatives and the Senate explained that "sick leave or other paid time off" do not include disability leave. "Parent" is defined as a biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

The state Family Care Law is administered by the Department of Labor and Industries (Department). It requires the Department to investigate alleged violations of these requirements. It also authorizes the Department to issue a notice of infraction and impose a civil penalty if the Department reasonably believes an employer has violated these requirements.

The federal Employee Retirement Income Security Act of 1974 (ERISA) governs employee pension, health, and welfare benefit plans, and expressly preempts state laws which "relate to any" such plans. These plans include ones that provide employees with benefits in the event of sickness or disability. The U.S. Supreme Court has noted that most of the benefits provided by ERISA-regulated plans accumulate over a period of time and are payable only upon the

occurrence of a contingency outside of the control of the employee. These plans do not include certain payroll practices. The U.S. Secretary of Labor's regulations specify that ERISA-regulated plans do not include the "payment of an employee's normal compensation, out of the employer's general assets, on account of periods of time during which the employee is physically or mentally unable to perform his or her duties, or is otherwise absent for medical reasons . . ." The U.S. Supreme Court has noted that these payroll practices generally involve payments that are fixed, due at known times, not dependent on contingencies outside the employee's control, and payable from the employer's general assets.

Summary of Bill:

Employees may use sick leave or other paid time off, including time allowed under certain disability policies, to care for certain family members, including adoptive parents, who have certain health conditions.

The definition of "sick leave or other paid time off" is modified to include time allowed under the terms of a disability policy to an employee for illness, vacation, and personal holiday. It includes any self-administered disability plan unless the employer maintains a separate bona fide paid sick leave policy plan or practice. It does not include any leave benefit granted by a disability policy covered by the Employment Retirement Income Security Act or by a third-party administered disability plan.

The definition of "parent" is modified to include an adoptive parent of an employee.

Rules Authority: The bill does not contain provisions addressing the rule-making powers of an agency.

Appropriation: None.

Fiscal Note: Requested on March 18, 2005.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.